

REMARKS

In response to the Office Action mailed March 24, 2011, Applicant respectfully requests the Examiner to reconsider the above-captioned Application in view of the foregoing amendments and the following remarks. Claims 1-21 are currently pending in the present Application.

Prior Art Rejections

Claims 1-5 and 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,827,576 issued to Karmaker, et al. (hereinafter “Karmaker”) in view of U.S. Patent No. 5,759,029 issued to Kobayashi, et al. (hereinafter “Kobayashi”). Claims 12-14 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karmaker in view of U.S. Patent No. 6,224,377 issued to Bachmann, et al. (hereinafter “Bachmann”). Further, Claims 6 and 15 are also rejected under Section 103(a) based on accommodation of these references. Applicant respectfully traverses these rejections and requests the claims be indicated as allowable because the proposed combinations do not render the claims obvious.

Initially, Applicant disagrees with the Office Action’s characterization of Karmaker and traverses the Office Action’s attempt to take official notice. The Office Action apparently attempts to take official notice in stating that,

It is held that the taught alternative of using all inherently colored fibers and of using inherently colored and non-pigmented fibers implies the use of at least two different types of fibers because if the inherent color fiber was used with non-pigmented fibers, then there would not be two different colors as taught.

Office Action, page 2 (emphasis added). This statement misconstrues Karmaker’s discussion of inherently colored fiber and pigmentation and would disregard the teachings of Karmaker. When read in the context of Karmaker’s full disclosure, a person of skill would not believe that Karmaker implies the use of different fiber types by stating that the post can be made “from the pigmented (or inherently colored) and non-pigmented fibers.” See Karmaker, col. 4, lines 1-3. Instead, Karmaker teaches that a single type of fiber can be colored (whether or not the fiber has a dark inherent color) such that the fiber has a color distinct from the remainder of the fibers forming the post. Karmaker elaborates in detail how the post can be molded using pigmented, inherently colored, and non-pigmented fibers. Karmaker, col. 3, line 60 to col. 4, line 8.

Karmaker indicates that it is possible to color the fibers during or after the manufacture of the post, such as by coating the post with a pigment. *See id.* at col. 4, lines 5-7. Thus, the fibers can have any transparent, translucent, or opaque color and still be colored using a pigment to produce a colored fiber bundle. *See id.* at col. 3, line 53 to col. 4, line 8. However, Karmaker is devoid of any implicit or explicit teaching that two or more different inherently colored fiber types are used.

In addition, the Office Action's interpretation of Karmaker would also require that Karmaker's fundamental principle of operation be changed. Karmaker primarily teaches that in the method of making the colored posts, "the fibers to be colored may be colored simultaneously during the manufacture of the post or after the post has been manufactured." *See* Karmaker, col. 3, lines 60-64. Karmaker also discusses various steps and procedures for coloring the posts, all of which require the application of a pigment or coating. *See id.* at col. 3, line 63 to col. 4, line 7. Thus, the concept of applying a pigment or color to the fibers is a fundamental teaching of Karmaker. In the combination proposed by the Office Action, no coloring or pigmentation of the post would be performed. Therefore, Applicant respectfully submits that the interpretation of Karmaker is incorrect because it would eliminate the fundamental principle of operation disclosed in Karmaker.

The Office Action also refers to Kobayashi as teaching that, "it is known in the dental arts that glass fibers and alumina fibers are equivalent reinforcing agents that can have a white color." *See* Office Action, page 3. However, the combination of Karmaker with Kobayashi would not result in the claimed dental replacement component. Assuming *arguendo* that the combination of Karmaker and Kobayashi is proper, a person of skill would not modify Karmaker to create a post having two types of fibers, but would instead substitute the carbon fibers taught in Karmaker with the glass fibers and alumina fibers taught in Kobayashi. Moreover, a person of skill would understand that using white or other fiber colors would not be a problem because Karmaker teaches that a desired pigmented resin can be applied to the fibers or post regardless of the fiber color, to obtain a desired appearance. However, neither Karmaker nor Kobayashi suggests or otherwise teaches that fibers having two different inherent colors should be used to form a post. Thus, Kobayashi fails to remedy the deficiencies in Karmaker.

Furthermore, a person of skill would not create a post having two different types of fiber because neither Karmaker nor Kobayashi provides any reason to make this modification. Indeed, a person of skill would not modify Karmaker to use two different types of inherently colored fiber because it would require a more complicated procedure. Further, there is no reason provided by Karmaker, Kobayashi or the Office Action which would compel a person of skill to move away from the simple and effective pigmenting or coloring technique disclosed in Karmaker in favor of a complex, undescribed method of forming a post using two types of fibers. There is no reason that a person of skill would disregard the teachings of Karmaker in favor of an undescribed, unpredictable, and more challenging technique. As indicated in the Obviousness Examination Guidelines,

In view of the cases decided since KSR, one situation when it is important to identify a reason to combine known elements in a known manner to obtain predictable results is when the combination requires a greater expenditure of time, effort, or resources than the prior art teachings. Even though the components are known, the combining step is technically feasible, and the result is predictable, the claimed invention may nevertheless be nonobvious when the combining step involves such additional effort that no one of ordinary skill would have undertaken it without a recognized reason to do so. When a combination invention involves additional complexity as compared with the prior art, the invention may be nonobvious unless an examiner can articulate a reason for including the added features or steps.

Examination Guidelines Update: Developments in the Obviousness Inquiry After KSR v. Teleflex, 75 Fed. Reg. 53643, 53646 (emphasis added). Thus, because the same problem is solved using a well-known, simpler method and configuration, there is no reason why a person of skill would modify Karmaker as suggested in the Office Action.

Applicant also noticed that the Office Action relies on Bachmann, similar to Kobayashi, to teach a different fiber type (namely, para-aramid fibers). Applicant respectfully submits that the same arguments provided above with respect to Kobayashi also apply to Bachmann and will not be repeated at length herein. Bachmann does not teach that different fiber types can be used to manufacture the post and also otherwise fails to remedy the deficiencies of Karmaker.

In contrast to Karmaker and Kobayashi, Claim 1 recites in part, a reinforcing element which comprises “carbon fiber wires . . . [which form a] carbon fiber part [which], at least in its portion or portions directed toward the surrounding area, supports or is provided with additional fiber material, wherein the additional fiber material comprises aluminum oxide fibers.” Further,

Application No.: 10/582,374
Filing Date: September 24, 2008

in contrast to Karmaker and Bachmann, Claim 12 recites in part, a reinforcing element comprising a “carbon fiber part [which], at least in its portion or portions directed toward the surrounding area, supports or is provided with additional fiber material with a color which better matches said coloring than does the carbon fiber, wherein the additional fiber material comprises para-aramid fibers.” Applicant respectfully submits that Karmaker, Kobayashi, and Bachman, whether in combination or individually, fail to teach at least these features recited in Claims 1 and 12.

In addition, Applicant respectfully submits that Claims 2-11 and 13-21, which depend from Claims 1 and 12, are allowable based on their own merit and for at least the reason that these claims depend from allowable independent base claims. Accordingly, Applicant respectfully request that the rejection of these claims be withdrawn and that Claims 1-21 be indicated as allowable.

No Disclaimers or Disavowals

Although the present communication may include alterations to the Application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this Application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this Application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present Application.

CONCLUSION

Applicant respectfully submits that the above rejections and objections have been overcome and that the present Application is now in condition for allowance. Therefore, Applicant respectfully request that the Examiner indicate that Claims 1-21 are now acceptable and allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Application No.: 10/582,374
Filing Date: September 24, 2008

Applicant respectfully submits that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicant respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present Application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicant also has not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicant reserves the right to later contest whether a proper reason exists to combine these references and to submit indicia of non-obviousness.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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